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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/834,572	04/13/2001	Brent K. Pope	IR 6625	4252

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EXAMINER

BHAT, NINA NMN

ART UNIT PAPER NUMBER

1761

DATE MAILED: 07/21/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/834,572

Applicant(s)

POPE ET AL.

Examiner

N. Bhat

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 8-13-2001, 8/6/2002, 10-28-2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2,4.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

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DETAILED ACTION

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. Claims 1-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Paluch et al. USP 6,117,477 in combination with Repholz USP 4,954,061.

Paluch et al. teach the invention substantially as claimed.

Paluch et al. teach a dual textured pet food having a core of an inner material, which is surrounded by a cereal outer shell. The method of making the dual textured animal food comprises co-extruding a first component within a second component to form an extrudate wherein the first component which comprises the core material includes lipid material, and the second component comprising the outer shell which is harder in texture than the inner component or core and is made of at least 30% cereal. Paluch et al. teach using co-extrusion apparatus wherein an extruded shell produced which includes an inner cream material pumped into a shell extruder die plate and

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distribute evenly within extruded ropes. The filed extruded ropes are then crimped and cut to form a "pillow" shaped animal food. [Note Column 5, lines 15-42] Specifically, Paluch et al. teach using an extruder, which was configured with a co-extrusion die configuration in a twin-screw extruder. A preconditioner was used to prepare the cereal for extrusion; a small amount of water was added to the cereal shell ingredients. The extrude rope containing the softer lipid interior (core) is surrounded by the harder outer shell material which is then divided into convenient sized pieces that are closed at the ends to have the softer lipid interior material completely encased by the harder outer material. The dividing can be accomplished by crimpers, which are well known in the extrusion art. [Note Column 10, lines 14-40]

However, Paluch et al. does not specify the die head assembly used in the co-extrusion apparatus.

Repholz et al. teach providing a dual textured pet food, which includes a multi-orifice co extrusion apparatus wherein a first material is extruded through a plurality of inner openings and a second material is extruded through a plurality of outer openings the inner and outer annular openings converging to enable formation of a center filled extrudate at a plurality of extrusion orifices. Repholz et al. teach that there are means for configuring the orifices to maintain and control uniform distribution and volumetric flow of the second extruded material about the first extruded material using a die plate. Specifically, the annular are configured effectively to maintain essentially constant volumetric flow of the outer extrudate across the entire cross-section of the extrusion of the extrusion orifice. The tubes and length of the die openings maintain constant

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volumetric flow of the inner extrudate. The constant volumetric flow of both extrudates enables the extrudate to be sliced or cut into essentially uniform pieces. The die plate can include die inserts associated therewith through which the center-filled streams are discharged after being discharged from the first or second spacer plates, a third space which is mounted between the first or second spacer plates and the die plate and which functions to stream line the center-filled stream and provide sufficient time for the components to adhere to each other and providing slicing means which slice the center filled stream s into individual product pieces.[Note Column 2, lines 45-68, Column 2, lines 8-37 and Column 4, lines 47-57] The die used in Repholz et al. does not provide a "pillow" shaped product. Repholz et al. teach that the dies plates include die inserts, which can provide a co-extruded product, which is circular, rectangular, any other shape. The die plate [60] is made of a thermally stable, corrosion resistant metal such as aluminum or stainless steel or can be made of a thermoplastic material. The die inserts [62] are formed of a thermoplastic low coefficient of friction material. Repholz et al. further teach the size of the food product formed by die plate [60] can be any desired by the skilled artisan. Repholz et al. further teach that the multi-orifice co-extrusion apparatus comprise a slicing means which functions to slice the center-filled stream as it is discharged from die passage 62 to form center filled product. The co-extrusion apparatus is a Wenger X-200 extruder, which is used with the die plate (60) and manifold (62). [Note Column 13, line 1 et seq.]

It would have been obvious from the combined teachings of Paluch et al. and Repholz et al. to provide a dual textured pet food having a core and a shell surrounding

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the core prepared by co-extrusion apparatus. Paluch et al. teach that any conventional co-extruding apparatus can be used wherein a cereal shell which is harder in texture is extruded about a core which is extruded of a softer texture to form a rope which is then crimped into a "pillow" shape. Repholz et al. teaches providing a dual textured pet food which describes the and multi-orifice co-extrusion apparatus which includes at least two shell flow areas through which an extruded shell composition flows, there are spacers plates, die plates and die inserts which are used in to control the flow of the cereal shell material and the inner core material. Although Repholz et al. does not specifically recite a shell flow control regulator, the spacers, dies and manifold provided in Repholz et al. does provide a co-extruded product wherein the cereal shell envelopes the core composition. It is maintained when reading Paluch et al. in view of Repholz et al. applicant's invention is rendered obvious to one having ordinary skill in the art at the time the invention was made.

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Hildebolt teach a center-filled pet food by co-extrusion. Chandler et al. teach a composite animal food which includes a shell surrounding a core. Spanier teach a dough product which surrounds an inner meat product. Keehn et al. teach a method of extruding multiple continuous bodies of radially layered products. Belshaw et al. teach an apparatus for making filled products of various shapes and sizes. The filling material is injected into an extruded shell material. Sheen et al. teach a nozzle for making snack foods having two or more filled axial cavities using a multiple extrusion nozzle having an outer extrusion segment and an inner extrusion segment for extrusion

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of a casing. Slaybaugh teach a method and means for making a composite food product. Schafer teach a concentric pastry die. Ramnarine teach a method for extrusion of baked goods, which includes a nozzle, which permits extrusion of an outer, expanded dough layer having two filler materials co-extruded therewith. A pillow shaped final product is formed having an outer layer of expanded dough and two different filler materials. Paluch et al. '746, '877 and '910 teach multicomponent pet food product which is a co-extruded product.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to N. Bhat whose telephone number is 703-308-3879. The examiner can normally be reached on Monday-Friday, 9:30AM-6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 703-308-3959. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-306-5665.



N. Bhat
Primary Examiner
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July 15, 2003